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VIA ELECTRONIC FILING

Ms. Molly Dwyer
Clerk of the Court
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

**Re: *Big Sky Scientific LLC v. Idaho State Police, et al.*, No. 19-35138 –
citation of supplemental authority pursuant to FRAP 28(j)**

Dear Ms. Dwyer:

Appellant Big Sky Scientific LLC (Big Sky) submits as supplemental authority the attached executive summary and legal opinion issued by the U.S. Department of Agriculture (USDA) on May 28, 2019. The opinion addresses provisions in the Agriculture Improvement Act of 2018 (2018 Farm Bill) regarding the interstate transportation of hemp at issue in this case.

The opinion concludes that: “[a]s of the enactment of the 2018 Farm Bill on December 20, 2018, hemp has been removed from schedule I of the Controlled Substances Act (‘CSA’) and is no longer a controlled substance.” Opinion 1, 3. As USDA explains, the removal of hemp from the CSA is self-executing and no other action is necessary to execute this removal. *Id.* at 4-6. The opinion thus refutes the Idaho State Police’s contention that hemp remains a controlled substance under the CSA. Idaho State Police Br. 34-37.

USDA also concludes that “States and Indian tribes may not prohibit the interstate transportation or shipment of hemp lawfully produced under the Agricultural Act of 2014 (‘2014 Farm Bill’).” Opinion 1, 8. USDA agrees that Subtitle G to the Agricultural Marketing Act of 1946, added by the 2018 Farm Bill, allows hemp production to continue in accordance with “other Federal laws,” like

Molly Dwyer
Rule 28(j) Letter
June 6, 2019
Page 2

the 2014 Farm Bill. *Id.* at 8-10 (citing 7 U.S.C. § 1639p(f)). 2014 Farm Bill hemp is therefore produced in accordance with Subtitle G and is protected in interstate transportation by 2018 Farm Bill § 10114(b). *Id.* at 8-10. The opinion thus supports Big Sky's argument that Section 10114(b) prohibits Idaho from banning the interstate transportation of hemp produced in Oregon under the 2014 Farm Bill. *See* Big Sky Opening Br. 24-26; Big Sky Reply Br. 6-12. Indeed, the opinion specifically disagrees with the District Court's opinion below on this point. Opinion 10-11.

Although USDA's opinion does not have the force of law, its "rational validity," *Tablada v. Thomas*, 533 F.3d 800, 806 (9th Cir. 2008), demonstrates that the Court should give it "persuasive, if not decisive, force," *see Seaview Trading, LLC v. C.I.R.*, 858 F.3d 1281, 1285 (9th Cir. 2017).

Very truly yours,

/s/ W. Christopher Pooser

W. Christopher Pooser

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